DIANA CHOO MEI LING

v.

CHOO LEE CHOY & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2(S6)-22-178-1989]
26 APRIL 2001

CIVIL PROCEDURE: *Adjournment - Application for - Absence of plaintiff on medical grounds - Production of medical certificate - Whether accepted - Refusal of adjournment - Prior numerous postponements taken into account for refusal*

The plaintiff who sued the defendants pleading various allegations, requested for an adjournment of her case, stating that she was residing in Australia and that she was too seriously ill to attend the court hearing in Malaysia. The plaintiff tendered a medical certificate to substantiate her request.

Held:

[1] Having considered the numerous postponements already granted in this case and the fact that the plaintiff had been given ample time to present herself in court on the hearing date, the plaintiff ought to have made her return journey to Malaysia well in advance to prepare herself for the case. (p 23 f-g)

[2] The medical certificate presented to the court was not accepted. Conclusively, the plaintiff seemed content to let the case be left in court. This delay and unwillingness on the part of the plaintiff to pursue her case to a conclusion was unacceptable. (pp 23 h & 24 c)

[Plaintiff's suit dismissed with costs to the defendants.]

For the plaintiff - GS Yapp; M/s Lee Min Choon & Co
For the 2nd defendant - Ajit Kumar; M/s Chooi & Co
For the 3rd defendant - Dhinesh Bhaskaran; M/s Shearn Delamore & Co
For the 1st defendant- HK Low; M/s Low & Lim

Reported by Raja Vishnu Sivarajah

JUDGMENT

RK Nathan J:

Facts

The plaintiff, whose pleaded address showed that she was residing in Kuala Lumpur, sued her father as the 1st defendant, the bank as the 2nd defendant and the bank's solicitor as the 3rd defendant. The plaintiff pleaded various allegations against the defendants including fraud against the 3rd defendant, a very senior advocate and solicitor of the Malaysian Bar. Whilst the pleadings were closed as early as of 15 November 1990, the plaintiff made no effort to proceed to trial. Finally the case was fixed for hearing on 1 November 1999 after a case management with the previous judge on 12 July 1999. On 1 November 1999 the plaintiff's solicitors requested for an adjournment on the basis that she was then pregnant and under stress. The case was then postponed by consent to 26 June 2000 for hearing. On the date of the hearing the plaintiff, who again was not present in court, requested an adjournment through her counsel on the grounds that on the previous day her husband had met with an accident. By consent the case was again postponed to 15 and 16 November 2000. However, by a letter dated 7 November 2000 the registry informed all solicitors concerned that the case was again postponed to 5 and 6 March 2001. No reason was given.

By this time pursuant to a directive from the Chief Judge, Malaya, Court No. 2 was assigned all cases registered in Court No. 1. On 2 March 2001 solicitors for the plaintiff wrote a letter requesting an adjournment. The said letter is reproduced herewith:

> Your Ref: 22-178-89
> Our Ref: EY/L/3386/95/DCML
>
> 2 Mac 2001
>
> PENOLONG KANAN PENDAFTAR
> Mahkamah Tinggi Sivil 2
> Jalan Ampang
> 50450 Kuala Lumpur **Fax (2389021)/Serahan Tangan**
>
> Puan,
>
> **Per: Mahkamah Tinggi Guaman Sivil No. S6-22-178-89**
> **Diana Choo Mei Ling – vs – Choo Lee Choy & 2 Ors**
>
> Kami merujuk kepada perkara di atas.
>
> Pihak kami difahamkan bahawa perkara tersebut telah ditetapkan untuk bicara di hadapan Yang Arif Hakim Mahkamah 2 pada 5/3/2001. Pada pagi ini, pihak kami telah diberitahu plaintif sendiri yang dijangka untuk balik dari Australia minggu ini tidak sihat dan sakit tenat. Sedemikian, plaintif dinasihatkan supaya berehat dan tidak dapat balik ke Kuala Lumpur buat masa kini.

Memandangkan keadaan ini, kami dengan rendah dirinya ingin memohon penangguhan perbicaraan tersebut. Pihak kami akan menghadiri Mahkamah pada 5/3/2001 tersebut untuk menyerahkan sijil medikal kepada Mahkamah. Diharapkan permohonan kami di sini dapat dibenarkan dan segala kesulitan amatlah dikesali.

Yang benar,

t.t.
c.c. client.

On 5 March 2001 all counsel were present for the hearing of the case.

Findings Of The Court

Mr. Yap for the plaintiff informed the court that his client was in Australia and "seriously ill". He then tendered what he called a medical certificate which he said was couriered to him by the plaintiff from Australia. It is important to reproduce the said medical certificate which reads as follows:

... 20 …

I Hereby Certify that on 28.2.01 I examined DIANA CHOO who in my opinion is

* suffering from a medical condition who states that he/she was and will be travel
* unfit for ~~duty~~ up to and including ~~was~~ 4.3.01.

He/she states that the incapacity commenced on 28.2.01.

Signature	Sgd. …
Doctor's Name and address (Please Stamp or Print)	CHEVRON AFTER HOURS MEDICAL SERVICE 24 PALM BEACH AVE. PALM BEACH 4221 PH: 32 8666

* Delete as necessary.

On the basis of the said medical report counsel asked for an adjournment. This request was vehemently objected to by all counsel for the defendants. Mr. Ajit Kumar for the 2nd defendant pointed out that the said case had been delayed for too long and that there is a related foreclosure proceeding put on hold for a number of years pending the outcome of this case. He also pointed that the medical certificate did not contain sufficient details to show the nature of the plaintiff's illness. Further, the fact that her father, the 1st defendant, had passed away was well known to the plaintiff and she had done nothing

to substitute the 1st defendant's estate as the proper defendant. It was his view that the conduct of the plaintiff showed an inclination to merely leave the matter in court without wanting to pursue it to its conclusion. He informed the court that his instructions were to have the suit struck out with no further adjournments being granted.

Mr. Dhinesh Bhaskaran for the 3rd defendant pointed out that this suit had been dragging on for 12 years. Referring to the medical certificate, counsel submitted that no court in this country would accept such a medical certificate. For a start he pointed out that the medical certificate refers to the plaintiff as suffering from a "medical condition" which could even refer to a common cough and cold. The name of the doctor issuing the medical certificate is also missing. Counsel submitted that the case contained serious allegations against one of the leading solicitors in the country. It was also pointed out that having filed this suit against the said solicitor, the plaintiff also lodged a formal complaint against him with the Bar Disciplinary Board which summarily dismissed the complaint in August 1990. He therefore urged the court to dismiss the suit with costs as he was ready to proceed with his case. In reply Mr. Yap assured the court that the plaintiff has not settled in Australia but that he did not know why she had gone to Australia. To a question from the court as to how he had formed the conclusion that the plaintiff was "seriously ill" since the medical certificate made no such conclusion or statement, he admitted that when he spoke with the plaintiff, she did not tell him of her medical condition.

Having considered the numerous postponements already granted in respect of this case and considering the fact that the letter from the registry was dated 7 November 2000 and thus giving the plaintiff ample time to be present for her case fixed for hearing on 5 and 6 March 2001 the plaintiff ought to have made her return journey to Malaysia well in advance to prepare herself for the case. Even upon perusing the statement of claim I find that not only has the plaintiff made serious allegations of fraud against her deceased father, the bank and a very senior solicitor, the plaintiff has also alleged fraud against the Registrar of Titles and yet the said registrar had not been made a party. Further, since her father had passed away, she had done nothing to substitute the 1st defendant's estate as the 1st defendant.

The medical certificate presented to the court is totally unacceptable. It says "that on 28 February 2001 I examined Diana Choo …". Who this "I" is, this court will never know because assuming that the "I" mentioned in the medical certificate refers to a doctor, his name is conspicuously absent from the medical certificate notwithstanding the fact that there is a column requiring the doctor's name to be inserted. The medical certificate states that the plaintiff

is suffering from "a medical condition". What is this medical condition that would make her unfit for travel? Surely there is nothing wrong in stating in the medical certificate what that illusive medical condition actually is, more so when the plaintiff is relying on that medical condition to absent herself from a court appearance. Further the stamp showing the clinic she had attended states that it is an "after hours" clinic. Surely if the plaintiff was suffering from serious illness she would have admitted herself to a proper clinic and a full report on her condition would have been faxed to her solicitors who could have produced the same to this court. What is even more confusing is that the medical certificate does not even state which part of Australia this clinic is situated. This court has not been told where "Palm Beach" is. Having considered all issues I came to the conclusion that the plaintiff is quite content to let the case be left in court. This delay and the unwillingness on the part of the plaintiff to pursue her case to a conclusion is unacceptable. I therefore dismissed the suit with costs to the defendants.